



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF MANCHESTER FIRE DEPARTMENT :

Complainant :

v. :

MANCHESTER ASSOCIATION OF
FIREFIGHTERS, LOCAL 856 :

Respondent :

CASE NO. F-0104:32

DECISION NO. 95-46

APPEARANCES

Representing City of Manchester:

David Hodgen, Chief Negotiator

Representing Manchester Association of Firefighters:

Glenn Milner, Esq.

Also appearing:

Brent Lemire, City of Manchester
Bill Clayton, President Local 856
Mike Bouchard, Vice President Local 856
Jean Brassard, Sec/Treasurer Local 856

BACKGROUND

The City of Manchester Fire Department (City) filed an unfair labor practice charge against the Manchester Association of Firefighters (Association), Local 856 on March 29, 1995, alleging violation of RSA 273-A:5 II (f), for pursuing a wrongful demand to arbitrate. The Association answered on April 14, 1995. The matter was heard before the PELRB on May 9, 1995.

FINDINGS OF FACT

1. The City of Manchester Fire Department is a public employer of firefighters within the meaning of RSA 273-A: 1 X.
2. The Manchester Association of Firefighters is the duly certified bargaining agent for firefighters employed by the City.
3. The City and the Association are parties to a collective bargaining agreement (CBA) with an expiration date of December 31, 1992. Incorporated into the CBA is an automatic renewal clause which allows for termination by either party with notice sixty days prior to the expiration date. It is stipulated by the parties that notice of termination in accordance with the CBA has never been given.
4. Schedule V of the CBA addresses wage steps and longevity increases which were budgeted, funded and paid for each year of the contract and thereafter until, by resolution of June 7, 1994, the Board of Mayor and Aldermen of the City voted to abolish step and longevity increases for fiscal year 1995 effective July 1, 1994.
5. Grievances related to the resolution have been filed and processed up to the level of arbitration. The City does not agree to the arbitrability of the matter.

DECISION

The parties acknowledge that the automatic renewal clause requires that the terms and conditions of employment of the CBA be continued during the interstice between contracts. However, the City contends that the doctrine of maintenance of the status quo does not extend to money matters, which require a separate vote of the public employer's legislative body to appropriate funds in accordance with Appeal of Milton School District, 137 NH 240 (1993). The Association advances that Milton is inappropriate altogether since the parties have agreed on an automatic renewal clause which calls for affirmative termination and does not rely on the doctrine of maintaining the status quo.

An automatic renewal clause is, in essence, a multi year contract with no termination date and an automatic renewal clause is classified as a cost item. Milton, 137 NH at 243. Neither party may enforce a CBA if the legislative body rejects the cost items in it. Milton, 137 NH at 244. In the instant case, the legislative body of the City of Manchester, the Board of Aldermen, has rejected cost items in the form of step and longevity increases

yielding the automatic renewal clause unenforceable as to these increases. For the forgoing reasons the PELRB has determined that the matter is not subject to arbitration.

The Association's error of demanding arbitration constitutes an unfair labor practice. The request for arbitration must be withdrawn and the Association will cease and desist from further action on the matter.

So ordered

Signed this 22nd day of June, 1995.



EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members E. Vincent Hall and Richard Roulx present and voting.